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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|-----------------------|---------------------|------------------|
| 10/541,854   | 04/07/2006  | Erik Remko Dokkum Van | MULLE46.001APC      | 6042             |
| 20995 7590 04/07/2009<br>KNOBBE MARTENS OLSON & BEAR LLP<br>2040 MAIN STREET<br>FOURTEENTH FLOOR<br>IRVINE, CA 92614 |             |                       |                     |                  |
| EXAMINER<br>ANTHONY, JOSEPH DAVID  |             |                       |                     |                  |
| ART UNIT   |             | PAPER NUMBER          |                     |                  |
| 1796   |             |                       |                     |                  |
| NOTIFICATION DATE  |             | DELIVERY MODE         |                     |                  |
| 04/07/2009   |             | ELECTRONIC            |                     |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
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### Office Action Summary

**Application No.**

10/541,854

**Applicant(s)**

DOKKUM VAN, ERIK REMKO

**Examiner**

Joseph D. Anthony

**Art Unit**

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 7/11/05 as a preliminary amendment.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 and 15-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 15-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 08/31/2005
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 4-9 and 15-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Dependent claims 2, 4-5 and 9 are indefinite because there is no antecedent basis for the phrase "linoleum cement composition". The above dependent claims are ultimately dependent on independent claim 1 which is drawn to: "A composition with fire retardant properties". Linoleum cement, which is a binder, is only one component of the "composition with fire retardant properties".

Dependent claims 7, 16 and 19-20 are indefinite because there is no antecedent basis for the phrase: "a fire retardant composition". The above dependent claims are ultimately dependent on independent claim 1 which is drawn to: "A composition with fire retardant properties". It is clear to anyone having ordinary skill in the art that: "a fire retardant composition" is NOT coextensive in scope to "a composition with fire retardant properties", since the latter does NOT have to function as a complete fire retardant composition since it could theoretically burn at a reduces rate.

The dependent claims are being rejected here because they are dependent on a rejected base claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 7-8, 15, 19 and 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Ayers U.S. Patent Number 2,936,243 or Burmeister et al. U.S. Patent Number 6,462,123.

Ayers teaches linoleum containing compositions that are used to make floor and wall coverings as sheets, tiles and the like for artistic and wear-resistant coatings and other purposes, and to processes for making such products. The further addition of calcium carbonate as a useful filler is disclosed in column 4, lines 45-54. Applicant claims are deemed to be anticipated over Example 2 wherein a linoleum containing composition is made that comprises in part: linoleum cement, wood flour, and aluminum hydrate. The said composition is made into tough sheets.

Burmeister et al. teach electrically conductive linoleum-based floor covering with a content of an additive enhancing the conductive and antistatic properties of the floor covering, whereby the floor covering comprises as an additive at least one cationic compound with a quaternary nitrogen atom, particularly a derivative of imidazole, imidazoline or morpholine, whereby the covering also contains silica, particularly kieselguhr, in addition to the common processing aids and additives. The known use of chalk as a useful filler in linoleum compositions is disclosed in column 1, lines 1-35. Applicant's claims are deemed to be anticipated over Example 3, and over the compositions set forth in "Annex A" in columns 6-8, wherein linoleum containing compositions are taught that comprise in part: linoleum cement, ground cork, wood flour and aluminum hydroxide. The said compositions are made into tough sheets.

Claims 1-2, 7-8, 15, 19 and 21-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Szerreiks et al. U.S. Patent Number 6,831,023.

Szerreiks et al. teach an electrically conductive floor covering based on linoleum, comprising a wear layer and a sub-layer, whereby the floor covering has an electrical volume resistivity  $R_{sub.1}$  according to EN 1081, of a maximum  $10^{sup.7} \cdot \Omega \cdot m$ . The invention also relates to a method for producing said floor covering. The addition of chalk as a useful filler in linoleum compositions is disclosed in column 4, lines 20-28. Applicant claims are deemed to be anticipated over the Example wherein a linoleum containing composition is made that comprises in part: linoleum cement, sawdust, and aluminum hydrate. The said composition is made into tough sheets.

Claims 3-6, 9, 16-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ayers U.S. Patent Number 2,936,243 or Burmeister et al. U.S. Patent Number 6,462,123 or Szerreiks et al. U.S. Patent Number 6,831,023.

Ayers, Burmeister et al. and Szerreiks et al. have been described above and differ from applicant's claimed invention in that they do not directly teach (i.e. by way of an example) an aluminum hydroxide containing linoleum containing composition that also comprises calcium carbonate or chalk or limestone.

It would have been obvious to one having ordinary skill in the art to use the above cited sections of each patent as strong motivation to actually add calcium carbonate or chalk to the aluminum hydroxide containing linoleum containing

composition as additional filler for the benefits that it would confer to the composition as a whole.

Claims 1-9, and 15-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over SU 1479473A1 as abstracted by applicant's cited English language Abstract, said reference taken in view of anyone of Ayers U.S. Patent Number 2,936,243 or Burmeister et al. U.S. Patent Number 6,462,123 or Szerreiks et al. U.S. Patent Number 6,831,023.

SU 1479473A1 teaches linoleum containing compositions that comprising in part: linoleum, aluminum hydroxide and chalk. SU 1479473A1 seems to differ from applicant's claimed invention in that the further addition of cellulose fillers is not mention in the English language abstract.

It would have been obvious to one having ordinary skill in the art to use the disclosures of anyone of the secondary references which clearly disclose the addition of cellulose fillers to linoleum containing compositions as strong motivation to actually incorporate such cellulose fibers into SU 1479473A1 compositions.

***Prior-Art Cited But Not Applied***

Any prior-art reference which is cited on FORM PTO-892 but not applied, is cited only to show the general state of the prior-art at the time of applicant's invention.

***Examiner Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Joseph D. Anthony whose telephone number is (571) 272-1117. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (571) 272-1498. The centralized FAX machine number is (571) 273-8300. All other papers received by FAX will be treated as Official communications and cannot be immediately handled by the Examiner.

**/Joseph D. Anthony/  
Primary Patent Examiner  
Art Unit 1796  
03/30/09**